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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KATHRYN TOWNSEND GRIFFIN, HELEN
MCDONALD, and THE ESTATE OF
CHERRIGALE TOWNSEND,

17 Civ. 5221 (LLS)

Plaintiffs,

PRETRIAL ORDER NO. 6

- against -

EDWARD CHRISTOPHER SHEERAN, p/k/a
ED SHEERAN, ATLANTIC RECORDING
CORPORATION, d/b/a ATLANTIC
RECORDS, SONY/ATV MUSIC PUBLISHING,
LLC, and WARNER MUSIC GROUP
COPROPRATION, d/b/a ASYLUM RECORDS,

Defendants.

- - - - -X

In preparation for trial, Plaintiffs and Defendants each
sought *in limine* relief as to the following issues:

- (1) Precluding Plaintiffs from: arguing that the selection and arrangement of unprotectable elements in *Let's Get It On* ("LGO") includes the compositions key signature of E flat major; offering any evidence that compares the LGO deposit copy to the LGO sound recording made by Marvin Gaye; and, offering evidence of elements in *Thinking Out Loud*, which are not in the deposit copy of LGO. Dkt. No. 207 ("Defendants' Eighth Motion in Limine").
- (2) Precluding Plaintiffs from offering argument or evidence concerning the concert revenues from Ed Sheeran's live shows. Dkt. No. 210 ("Defendants' Ninth Motion in Limine").
- (3) Barring the testimony of Plaintiffs' expert, Dr. Stewart, or striking any references by him to the bassline, drum pattern, key signature, and lyrics found in the LGO sound recording or deposit copy. Dkt. No. 228 ("Defendants' Motion to Strike Pretrial Declaration of Dr. Stewart").
- (4) Excluding Defendants' proposed exhibits 217-234 of song "mashup" videos. Dkt. No. 216 ("Plaintiffs' Second Motion in Limine").

- (5) Excluding Defendants' proposed exhibits 302-303, constituting pre-suit correspondence and attachments between the parties' counsel. Dkt. No. 218 ("Plaintiff's Third Motion in Limine").
- (6) Excluding the proffered excerpts from the deposition testimony of Helen McDonald. Dkt. No. 221 ("Plaintiff's Fourth Motion in Limine").

12.

For the reasons stated on the record at the conference on March 31, 2023, Plaintiffs' Second, Third, and Fourth Motions in Limine and Defendants' Ninth Motion in Limine are denied at this time, with leave to renew them at trial.

13.

The Court's prior Orders, including the March 24, 2020 Order and the August 18, 2020 Order, limit the testimony of Dr. Stewart and are expected to be strictly followed. They forbid testimony of the similarity of TOL to the LGO sound recording, bassline, or drum patterns, which might confuse the jury about what is protected by the copyright.

14.

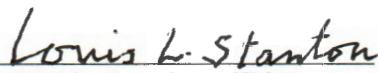
Defendants' Eighth Motion in Limine is denied in part and granted in part. Plaintiffs may rely on the E flat major key in their selection and arrangement argument. That is not a new legal theory and relying on the key does not pose any insuperable surprise or prejudice to defendants. Plaintiff's proposed Exhibit 128 is excluded under Evidence Rule 403, with leave to offer relevant portions that are not hearsay.

15.

The remainder of defendants' requests, those connected to the drum pattern and bassline, are denied with leave to renew at trial.

So Ordered.

Dated: New York, New York
April 5, 2023



LOUIS L. STANTON
U.S.D.J.